bottom hem of his shorts. But you have heard the evidence of Mr. Briggs that the bloodstains on the shorts were not consistent with having been made by contact with the baju. They were two different types of bloodstains. You must give Mr. Brigg's evidence very careful consideration. If they are not consistent with the bloodstains on the baju, then the point is 'Where did the bloodstains come from?'. There must have been two sources of bloodstains and the only source we know of was the little girl. There is evidence that she was practically split in two and there was a quantity of blood on her and underneath her on the ground".

We think this constitutes a misdirection. The fact that the blood on the shorts did not come there from contact with the baju in no way indicates that they were unconnected with the wounding of the appellant's wife. The argument of this passage is that because the bloodstains did not come from the wife they must have come from the deceased. We cannot find anything in the evidence which suggests that they were connected with the deceased rather than with the wife.

In view of this we consider that even if the assessors had returned a verdict with relation to the deceased of any offence other than murder such verdict could not have stood and, in the circumstances, all we can do is to allow the appeal and quash the conviction.

Appeal Allowed.

THAMBI DURAI v. PUBLIC PROSECUTOR.

[App. Crim. Juris. (Willan, C.J. Malayan Union, Murray-Aynsley, C.J. Singapore and Pretheroe, J.) March 26, 1947]

Penal Code Ss. 302 and 331 — Whether person who beats another with the intention of extorting a confession and thereby causes his death is guilty of murder — Misdirection.

In this case the facts showed that the appellant was responsible for and took part in the beatings which caused the injuries resulting in the death of the accused. He was convicted of murder and he appealed against his conviction.

Held, (1) that if the evidence is sufficient to show that the intention of the assailant was to cause such bodily injury as the assailant knew to be likely to cause death, then the assailant would be guilty of murder even though at the same time the primary object of the beating was to extract a confession from the victim; (2) that in this case there was misdirection in the summing up and as the Appellate Court was unable to say that the Assessors would have inevitably arrived at the same verdict if they had not been so misdirected, the conviction for murder must be quashed.

CRIMINAL APPEAL.

P. D. Regester (*R. P. S. Raiasooria* with him) for the Appellant.

D. B. W. Goode (Crown Counsel) for the Respondent.

The judgment of the Court of Appeal was delivered by :—

Willan, C. J. : — In this case we have no doubt that the Appellant was responsible for, and took part in, the beatings which caused the injuries resulting in the death of the deceased.

As in other cases in which an assailant beats his victim with the intention of extorting a confession and death is caused, the question of whether the assailant is guilty of murder is one of how far the assailant intended to go. We are unable, however, to agree with counsel for the Appellant that a person who tortures another in order to extract a confession can never intend the other to die, nor can he be presumed to know that death is likely to result, because his object is to make his victim admit his guilt, and he cannot secure that if he knowingly kills his victim. That proposition, cited from *Gour* on the Penal Law of India, goes too far, and we are unable to accept it. In our view, if the evidence is sufficient to show that the intention of the assailant was to cause such bodily injury as the assailant knew to be likely to cause the death of his victim, then the assailant would be guilty of murder even though at the same time the primary object of the beating was to extract a confession from his victim.

Applying that test of intention to the facts of this case, the question which had to be decided at the trial was whether the Appellant had the knowledge, belief or expectation that when the deceased was beaten, as he was, but not with a deadly weapon, death would in the ordinary course of things ensue.

In this case it is true that the beating which the deceased received broke his ribs, but that in itself is not sufficient in the ordinary course of things to cause death. This case is particularly difficult because there was no post-mortem examination and no medical evidence as to the specific cause of death. The medical evidence merely disclosed the broken ribs, nothing further, and hence, since no deadly weapon was used by the appellant or the other assailants assisting him, the directions of the learned trial Judge to the Assessors as to the intention necessary to bring this case into the category of murder must be scrutinised with particular care.

In an otherwise careful and excellent summing-up it appears to us that the learned trial Judge used certain phrases adverse to the Appellant which are not borne out by the evidence, and which cannot be supported by medical jurisprudence. For instance, the learned trial Judge directed the Assessors in this case that if they accepted the medical evidence, the fractures of the ribs were such as themselves to endanger life, because the evidence was that they almost certainly punctured the vital parts internally. We can find no evidence on the record to support that statement. Further, the learned Judge directed the Assessors that they might find that the appellant intended to cause the death of the deceased if, to quote that particular passage from the summing-up, "you find simply an intention to cause such bodily injury, such as breaking the ribs for example, as would in the ordinary course of nature cause death". As we have stated, a broken rib, in itself, is not sufficient to cause death, and since in this case there was no post-mortem examination and no medical evidence as to the specific cause of death, we consider that these particular directions may have influenced the Assessors adversely against the Appellant.

After careful consideration we find ourselves in the position that we are unable to say that the Assessors would have inevitably arrived at the same verdict if they had not been directed as stated, and therefore we feel it would be unsafe to uphold the conviction for murder. The evidence clearly supports a conviction for the offence of causing grevious hurt for the purpose of extorting a confession, and accordingly we quash the conviction for murder, and substitute a conviction for an offence against section 331 of the Penal Code. As regards sentence, we consider this is a case in which we should inflict the maximum punishment under that section and accordingly we sentence the Appellant to ten years rigorous imprisonment to date from the date of his conviction i.e. the 5th day of December, 1946.

Order Accordingly.

TANG MEOW SAM v. PUBLIC PROSECUTOR

[App. Crim. Juris. (Willan, C.J.) October 31, 1947]

Common Gaming Houses Enactment (Cap. 47), Section 4 (i) (b) — Owner charged with permitting another person to use room as Common Gaming House — Presumption on finding of instruments of gaming.

In this case the facts were shortly as follows:—The appellant was the principal tenant of house No. 111 Batu Road, Kuala Lumpur, and sublet a room, on the first floor, to another person. The Police raided the room on a Search Warrant and found appliances for gaming in the room. When the police arrived at the premises the main door by which entry could be effected to the first floor thereof was locked and it was the appellant who opened it on the police demanding entry. The appellant was convicted on a charge that he being the owner of the room permitted another person to use it as a common gaming house. He appealed against his conviction.

Held, (1) that the presumption arising from the finding of instruments of gaming and other circumstances affects the place in question itself and is therefore effective against any person interested in it whether in occupation or not; (2) that the principal tenant of a house, having let one room which becomes a common gaming house, can be convicted of having permitted the use of the room as a common gaming house, if he is shown to have known of the user and not taken steps to prevent it by determining the tenancy or otherwise; and (3) that knowledge of such user could be inferred in this case from the circumstances including the fact that the front door of the house was locked, that the key was in the control of the principal tenant and that the occupants of the first floor in the house, including the appellant, were living very close together.

CRIMINAL APPEAL.

F. G. Charlesworth for the Appellant.

Shield (Crown Counsel) for the Respondent.

Willan, C. J. : — In this case the appellant was originally charged under section 4 (i) (b) of the Common Gaming Houses Enactment (Cap. 47) in that being the *occupier* of a room in premises No. 111 Batu Road, Kuala Lumpur, he permitted another person to use such room as a common gaming house, on the 17th day of July, 1947.

During the trial the charge was amended to one under the same section, that the appellant, being the *owner* of the room in question, permitted another person to use such room as a common gaming house.

The following facts were proved at the trial :—

(a) That the appellant has rented, and still continues to rent, house No. 111 Batu Road, Kuala Lumpur, as the principal tenant, and has done so from the year 1945.

(b) That the appellant, himself, originally occupied the room in question, which is on the first floor of that house, but on the 15th day of May, 1947, he sub-let that room to the other person and continued to live on the first floor near to that room. These facts of sub-letting and continuation of residence are taken from the evidence of the appellant himself.

(c) That on the day in question, when the police raided the premises, appliances for gaming were found in the room in question.

(d) That on the police arriving at the premises the main door by which entry could be effected to the first floor thereof was locked, and that it was the appellant who opened it on the police demanding entry.